

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
In re: :

LEHMAN BROTHERS SECURITIES :
AND ERISA LITIGATION :

09 MD 2017 (LAK)

This document applies to: :

City of South San Francisco v. Citigroup Global :
Markets, Inc., et. al., Case No. 09-cv-1946 :

City of Long Beach v. Fuld, et al., Case No. 09-cv- :
3467 :

County of Tuolumne v. Ernst & Young, LLP, et al., :
Case No. 09-cv-3468 :

City of Fremont v. Citigroup Global Markets, Inc., et. :
al., Case No. 09-cv-3478 :

**DEFENDANTS’ MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS’
MOTION FOR LIMITED RELIEF FROM THE PSLRA DISCOVERY STAY**

Plaintiffs in the four above captioned cases (collectively the “Second California Actions”) have now joined in the motion brought by Lead Plaintiffs in *In re Lehman Brothers Equity/Debt Securities Litigation*, 08 Civ. 5523 (LAK) (the “Equity/Debt Action”) which seeks modification of the discovery stay imposed by the Private Securities Litigation Reform Act of 1995 (“PSLRA”) and this Court’s Pretrial Order No. 1 (“PTO No. 1”). The Second California Actions Plaintiffs’ motion follows similar motions made by plaintiffs in *In re Lehman Brothers Mortgage-Backed Securities Litigation*, No. 08-CV-6762 (LAK) (the “SASCo Action”) and in six other actions originally filed in California state court (the “California Actions”).¹ This third “me

¹ *San Mateo County Investment Pool v. Fuld, et al.*, No. 09-CV-1239 (LAK); *Zenith Ins. Co. v. Fuld, et al.*, No. 09-CV-1238 (LAK); *Solton v. Fuld, et al.*, No. 09-CV-1944 (LAK); *City of*

too” motion is as meritless as the motions it joins and should be denied for the reasons described in the opposition papers filed by Defendants in the Equity/Debt Action, the SASCo Action and the California Actions.²

Dated: New York, New York
November 19, 2009

Respectfully submitted,

SIMPSON THACHER & BARTLETT LLP

By: s/ Michael J. Chopiga
Michael J. Chopiga (mchopiga@stblaw.com)
Mary Elizabeth McGarry (mmcgarry@stblaw.com)
Erika H. Burk (eburk@stblaw.com)
425 Lexington Avenue
New York, NY 10017
Tel: (212) 455-2000
Fax: (212) 455-2502

*Attorneys for Defendants Michael L. Ainslie, John F. Akers,
Roger S. Berlind, Thomas H. Cruikshank, Marsha Johnson
Evans, Sir Christopher Gent, Roland A. Hernandez, Henry
Kaufman, John D. Macomber and Christopher M. O’Meara*

Auburn v. Fuld, et al., No. 09-CV-3474 (LAK); *City of Burbank v. Fuld, et al.*, No. 09-CV-3475 (LAK); *City of San Buenaventura v. Fuld, et al.*, No. 09-CV-3476 (LAK).

² The *In re Bank of America Securities, Derivative and ERISA Litigation*, 09 MD 2058 (DC) (S.D.N.Y. Nov. 16, 2009) slip opinion enclosed in Equity/Debt Lead Plaintiffs’ November 17, 2009 letter of supplemental authority has no applicability. Among other distinguishing features in the Bank of America securities litigation, “discovery is moving apace in parallel litigation,” *id.* at 5, and there is a “firm and fixed” March 1, 2010 trial date set for a government civil action arising out of some of the same facts. See Order, *SEC v. Bank of Amer. Corp.*, 09 Civ. 6829 (Sept. 22, 2009). There is nothing comparable here. Moreover, the Bank of America plaintiffs were seeking discovery from defendants only – not third parties – and thus defendants presumably had already reviewed the documents at issue. Here, Lead Plaintiffs’ request goes far beyond the Bank of America plaintiffs’ request to encompass millions of documents produced by various third parties, not all of which have been identified, but including Lehman Brothers Holdings Inc. Defendants have not seen the overwhelming majority of these documents. If the documents are produced in these actions, therefore, Defendants will expend considerable resources to review these millions of documents before this Court rules on the legal sufficiency of Lead Plaintiffs’ complaint. This is exactly the scenario the PSLRA was designed to protect against. See, e.g., *In re AOL Time Warner, Inc. Secs. & ERISA Litig.*, No. 1500, 02 Civ. 5575, 2003 WL 21729842 (S.D.N.Y. July 25, 2003).

ALLEN & OVERY LLP

By: s/ Patricia M. Hynes
Patricia M. Hynes
(patricia.hynes@allenoverly.com)
Todd Fishman
(todd.fishman@allenoverly.com)
1221 Avenue of the Americas
New York, NY 10020
Tel: (212) 610-6300
Fax: (212) 610-6399

*Attorneys for Defendant Richard S.
Fuld, Jr.*

LATHAM & WATKINS LLP

By: s/ Miles N. Ruthberg
Miles N. Ruthberg
(miles.ruthberg@lw.com)
Jamie L. Wine
(jamie.wine@lw.com)
885 Third Avenue
New York, NY 10022
Tel: (212) 906-1200
Fax: (212) 751-4864

Attorneys for Defendant Ernst & Young LLP

PROSKAUER ROSE LLP

By: s/ Robert J. Cleary
Robert J. Cleary
(rjcleary@proskauer.com)
Dietrich L. Snell
(dsnell@proskauer.com)
Mark E. Davidson
(mdavidson@proskauer.com)
Seth D. Fier
(sfier@proskauer.com)
1585 Broadway
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

*Attorneys for Defendant Erin
Callan*